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**AGENDA ITEM
REQUEST/JUSTIFICATION FORM**

(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING**

Agenda item: Consent Agenda

(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)

Date to be on agenda: 6-17-14

Exact wording to be used for the agenda: Approval of agreement with UNMC
Physicians for Dr. Brenda K. Keller, MD, giving medical direction to care and care for Short-Term
Rehabilitation patients at DCHC

Action requested: Approval of agreement

Amount requested: Unknown Object Code: _____

Is item in current year's budget? Yes X No _____

Does this item commit funds in future years? Yes X No _____

If yes, explain: Ongoing contract – we will pay UNMC Physicians for Dr. Keller's services
at the rate of \$125.00 per hour and DCHC will bill and capture third party
reimbursement

If an agreement or contract, has the County Attorney
reviewed and approved? Yes X No _____

Previous action taken on this item, if any: None

Recommendations and rationale or action: Approval

Will anyone speak on behalf of this item, if so who? Jim Tourville, DCHC Admin.

If this is a rush agenda item, please explain why: _____

Submitted by (Name & Dept.): Jim Tourville, DCHC Administrator Ext. #7314

Date submitted: 6-11-14

List Attachments: Resolution, Three copies of contract

(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

Completed by receiving office

Received in Administrative Office: Date 6/11/14 Time _____

BOARD OF COUNTY COMMISSIONERS

DOUGLAS COUNTY, NEBRASKA

Resolved

WHEREAS, DOUGLAS COUNTY, NEBRASKA is owner and operator of, Douglas County Health Center, (hereinafter referred to as "DCHC") in Omaha, Nebraska with the need for physician services for its short term rehabilitation patient population; and

This CONTRACT is made and entered into by and between UNMC Physicians for the services of Brenda K. Keller, M.D., a provider giving medical direction services located in Omaha, Nebraska (hereinafter referred to as "MEDICAL DIRECTION") and DOUGLAS COUNTY, NEBRASKA, Omaha, Nebraska (hereinafter referred to as "DOUGLAS COUNTY" or as "DCHC").

WHEREAS, MEDICAL PROVIDER provides medical direction and is licensed, qualified and competent to provide medical care to short-term rehabilitation patients, and

Now **THEREFORE**, for mutual consideration herein contained, the parties agree that MEDICAL PROVIDER will provide medical direction at DCHC in accordance with the following terms and conditions.

NOW THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS THAT this contract between UNMC Physicians for the services of Brenda K. Keller, MD and Douglas County, Nebraska is hereby ratified and approved and that the Chair of this Board is authorized to sign said **RESOLUTION** and **CONTRACTS** on behalf of **DOUGLAS COUNTY, NEBRASKA**.

DATED this 17th day of June, 2014.

Douglas County

MEDICAL DIRECTION SERVICES AGREEMENT

This MEDICAL DIRECTION SERVICES AGREEMENT ("Agreement") is made effective and entered into as of the 14th day of January, 2014 ("Effective Date"), by and between UNMC Physicians, a Nebraska non-profit corporation ("UNMCP"), and Douglas County ("COUNTY") which owns and operates the Douglas County Health Center ("DCHC"), located at 4102 Woolworth Avenue, Omaha, NE 68105.

RECITALS

WHEREAS, COUNTY wishes to obtain medical director services ("Services") at DCHC for its Short Term Rehabilitation Unit; and

WHEREAS, COUNTY desires to retain UNMCP to provide the Services set forth in this Agreement, and UNMCP desires to provide such Services for COUNTY in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the Parties agree as follows:

AGREEMENT

1. **Services.** COUNTY hereby engages UNMCP to make available on an independent contractor basis, the Services of Brenda K. Keller M.D. ("Physician") to provide those Services to COUNTY and its patients as set forth in Exhibit 1, which is incorporated herein by reference. All Services provided by UNMCP through Physician shall be such services that Physician, in his/her sole discretion, deems necessary or reasonable to provide adequate medical care to the patients of COUNTY. Services shall be provided at DCHC.
2. **Compensation.** In consideration of the Services provided by UNMCP through the Physician, for services provided prior to June 1, 2014, COUNTY shall pay UNMCP the rate of One Hundred Twenty-Five Dollars (\$125.00) per hour. For services provided on June 1, 2014, and after, COUNTY shall pay UNMCP One Thousand two hundred-fifty dollars (\$1,250.00) per month, for 8-10 hours of services per month. Payment shall be due no later than thirty (30) days after the last day of the calendar month in which Services were provided.
3. **Term.** This Agreement shall be effective as of January 14, 2014, and terminate January 13, 2017, subject, however, to earlier termination as provided in this Agreement. This Agreement shall not automatically renew for any successive term.
4. **Termination.** This Agreement shall automatically terminate (i) upon the expiration of the term provided above; (ii) in the event COUNTY's right to participate in the Medicare, Medicaid, or any other federal or state health program is terminated for any reason or relinquished voluntarily (iii) in the event of the Physician's death or long-term disability; (iv) upon termination of Physician's employment with UNMCP; (v) upon Physician's loss of license to practice medicine; (vi) or upon thirty (30) days prior written notice by either party to this Agreement.

Upon expiration or termination of this Agreement, Parties shall not have any further obligation hereunder except for (i) obligations accruing prior to the date of termination; and (ii) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement.

5. UNMCP's Responsibilities.

- a. **Schedule.** During the term of this Agreement, Physician shall dedicate approximately 10 (ten) hours per month to providing the Services. Physician shall provide reasonable notice as soon as practicable to COUNTY and UNMCP of an emergency or unplanned absence.
- b. **Qualifications.** Physician shall at all times during the course of this Agreement:
 - i. Be, and remain, a participating provider in the Medicare and Medicaid programs, and with any managed care program with which COUNTY is now or hereafter becomes affiliated. UNMCP represents and warrants that Physician has never been excluded from participation in any federally funded health care program including, without limitation, Medicare, Medicaid or TRICARE, nor has been convicted or found to have violated any federal or state fraud and abuse law or illegal remuneration law;
 - ii. Possess a valid and unlimited license to practice medicine pursuant to the laws of the State of Nebraska;
 - iii. Possess a valid federal narcotics number; and
 - iv. UNMCP shall provide Physician(s) who maintain general professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each occurrence and participate in the Nebraska Hospital Medical Liability Act. UNMCP shall annually furnish appropriate evidence of the existence of such insurance to DCHC upon request. UNMCP shall also maintain comprehensive General Liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each occurrence and shall provide proof thereof.

This Agreement is not and shall not be construed as any form of guarantee or assurance by UNMCP that the Physician will receive or retain necessary employment with UNMCP for purpose of discharging his/her responsibilities hereunder.

- c. **Standards of Practice.** Physician shall comply with the bylaws and/or rules and compliance program, if any, of COUNTY, a copy of which shall be provided to UNMCP and Physician prior to Services being provided under this Agreement. COUNTY agrees to provide reasonable written notice to UNMCP and Physicians of any change to its bylaws and/or rules and/or compliance program.
- d. **Protocols and Procedures.** The Parties agree to make a good faith effort to work cooperatively with each other to assure the Services are coordinated and provided in a timely and professional manner.

6. COUNTY's Responsibilities.

- a. **Compliance with Laws.** COUNTY shall be responsible for complying with all applicable laws, regulations, and ordinances associated with the Facility, its patients, and the services it provides.

- b. **Space and Equipment.** COUNTY shall, at its expense, make available space, equipment, and supplies adequate for provision of the Services.
 - c. **Ancillary Personnel.** COUNTY shall retain and make available to Physician qualified professional, technical, and clerical personnel, whether contracted or employed ("Ancillary Personnel") to support Physician's provision of the Services. COUNTY shall be solely responsible for the payment of the salary, social security, workers' compensation, and other employee benefits of any kind for Ancillary Personnel. COUNTY shall be responsible for any liabilities of its employees, including contracted Ancillary Personnel.
 - d. **Notice.** COUNTY shall promptly notify UNMCP and Physician, in writing, of (i) any dissatisfaction or complaint with Services or any actual or potential variance from this Agreement and shall allow reasonable opportunity for UNMCP or Physician to respond to such complaint; (ii) any potential or actual claim or lawsuit against COUNTY, UNMCP, or Physician that is associated with or may have an effect on this Agreement; and (iii) any inquiry from any governmental or regulatory agency that may arise from, be associated with, or have bearing on the Services. UNMCP and/or Physician shall be provided opportunity to fully participate in any investigation, analysis, and/or response to any such inquiry.
 - e. **Insurance.** COUNTY shall, at its expense obtain and maintain policies of general and professional liability insurance, in customary amounts, to insure it and its employees and agents against any claim or liabilities for damages arising for any matter related to the Services provided under this Agreement. COUNTY shall furnish appropriate evidence of the existence of such insurance to UNMCP upon request.
7. **Independent Contractor.** It is expressly understood and agreed that, in the performance of Services under this Agreement, UNMCP and the Physician shall at all times act as an independent contractor with respect to COUNTY, and not as an employee or agent of COUNTY. Nothing in this Agreement will be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties. In no event shall either Party or Physician be liable for the debts or obligations of the other except as otherwise specifically provided in this Agreement.
8. **Tax and Withholdings.** The Parties agree that (i) Physician will not be treated as an employee of the COUNTY for federal tax purposes; (ii) COUNTY will not withhold on behalf of Physician any sums for income tax, unemployment insurance, social security, or any other withholdings pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to employees of COUNTY; and (iii) all such payments, withholdings, and benefits, if any, are the sole responsibility of UNMCP and/or Physician.
9. **Indemnification.** Each Party will indemnify, defend and hold harmless the other Party from any and all liability, expense, cost, attorney's fees, claim, judgment, suit and/or cause of action (whether or not meritorious), settlement, or demand for personal injury, death or damage to tangible property which may accrue against the other Party to the extent it is caused by the negligent acts or omissions of the indemnifying party, its officers, employees, agents, or

subcontractors while performing their duties under this Agreement, provided that the other Party gives the indemnifying party prompt, written notice of any such claim, suit, demand or cause of action. The other Party shall cooperate in the defense or settlement negotiation of such claim, suit, demand or cause of action. The provisions of this section shall survive expiration or termination of this Agreement. These Indemnification provisions are not intended to waive a Party's sovereign immunity. A Party's liability is governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law.

10. **Access to Books and Records.** To the extent required by Section 1861(v)(1)(I) of The Social Security Act as amended, each Party shall permit, and shall ensure that any subcontractor permits, upon proper request, the United States Department of Health and Human Services, the Comptroller General of the United States, and their duly authorized representatives, access to this Agreement and to all books, documents, and records necessary to verify the nature and extent of the costs of services provided by either Party under this Agreement, at any time during the term of this Agreement and for an additional period of four (4) years following the last date services are furnished under this Agreement. If either Party carries out any of its duties under this Agreement through an agreement between it and an individual or organization related to it, any party to this Agreement shall require that a clause be included in such agreement so that the related organization shall notify UNMCP immediately of the nature and scope of any request for access to books and records described above and shall provide copies of any books, records, or documents to UNMCP prior to the provision of same to any governmental agent to give UNMCP an opportunity to lawfully oppose such production of documents. In addition, DCHC shall indemnify and hold UNMCP harmless from any liability arising out of any refusal by DCHC or its subcontractors to grant access to books and records as required above. Nothing herein shall be deemed to be a waiver of any applicable privilege (such as attorney-client privilege) by UNMCP.
11. **Business Information, Patient Files, and Medical Records.** All COUNTY business information not available to the public including COUNTY policies, COUNTY financial data, COUNTY employee information, patient information, charts, non-medical patient data, patient correspondence, records and files of any patients of Physician providing Services under this Agreement shall be the property of COUNTY, and UNMCP or Physician shall not remove such records or copies of such records at any time before, during or after termination of this Agreement, with the exception of copies of patient medical information as required by law or pursuant to a specific request in writing from a patient treated by the Physician. Research data may be taken by UNMCP if written permission is obtained from the COUNTY. The provisions of this paragraph will survive the termination of this Agreement.
12. **HIPAA.** The parties shall maintain and safeguard the privacy, security, and confidentiality of all individually identifiable health information in accordance with applicable Nebraska law and provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, and in accordance with all applicable federal, state, and local statutes, regulations and policies regarding the confidentiality of patient health information.
13. **Use and Disclosure of Protected Health Information.** The Parties acknowledge the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and that DCHC is a Covered Entity as defined by the Act. When operating under this Agreement, UNMCP acknowledges that COUNTY may disclose to UNMCP protected health information (PHI) as defined under HIPAA and its Regulations (45 CFR Parts 160 and 164), as amended. The permitted and required uses and disclosures of PHI are specifically limited to that necessary for UNMCP to perform under this Agreement. UNMCP agrees to comply with applicable requirements of law relating to PHI and with respect to any task or other activity UNMCP

performs on behalf of COUNTY, to the extent COUNTY would be required to comply with such requirements. UNMCP and its employees shall access, use and disclose PHI of COUNTY only as permitted under the COUNTY'S HIPAA Compliance Plan and shall be subject to sanction, including exclusion from COUNTY'S facilities upon violation.

In addition, UNMCP agrees to:

- a. Use and disclose PHI only as permitted or required by this Agreement or as otherwise required by law.
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for in this Agreement.
- c. Report to COUNTY without unreasonable delay but in no event more than three (3) business days after discovery, any unauthorized use or disclosure of PHI not otherwise provided for by this Agreement of which UNMCP becomes aware, including any breach of PHI and any security incident of which it becomes aware, together with any remedial action taken or proposed to be taken by UNMCP with respect to such unauthorized use or disclosure.
- d. Cooperate with COUNTY to mitigate any harmful effects of such unauthorized use or disclosure. In the case of a breach as determined to exist in the sole discretion of COUNTY which was due to a violation of this Agreement by UNMCP, UNMCP shall pay for the reasonable costs of investigation and mitigation and the reasonable costs of notification to the affected individuals.
- e. Require any subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of UNMCP in connection with this Agreement, to agree in writing to the same restrictions and conditions on the use and/or disclosure of PHI that apply to UNMCP. Such agreement shall include a provision requiring the subcontractor and/or agent to notify UNMCP of any instances or unauthorized use or disclosure of PHI provided by UNMCP.
- f. Disclose to UNMCP's subcontractors, agents or other third parties only the minimum necessary PHI to perform or fulfill their obligations under this Agreement.
- g. Comply with patient rights conferred by HIPAA, to include allowing patients' access to their own PHI, making PHI available for amendment and incorporating any amendments to PHI in accordance with HIPAA and accounting for disclosures of PHI as required under HIPAA.
- h. Make its internal practices, books and records relating to the use and disclosure of PHI received from or created or received by it on behalf of COUNTY available to the Secretary of the Centers for Medicare and Medicaid Services (CMS) for purposes of determining COUNTY's compliance with HIPAA. UNMCP shall immediately notify COUNTY upon receipt by UNMCP of any such request, and shall provide COUNTY with copies of any such materials.
- i. At termination of this Agreement, return to COUNTY or destroy all PHI received from, or created or received by UNMCP on behalf of COUNTY which UNMCP or its

subcontractor/agent still maintains in any form and retain no copies of such PHI. If UNMCP is unable to return or destroy such PHI, the terms of this section shall apply to such PHI for as long UNMCP or its subcontractor/agent has possession or access to PHI.

Notwithstanding any other provision of this Agreement, and in addition to any other remedies COUNTY may have, COUNTY may immediately terminate this Agreement without penalty or recourse by UNMCP if it determines, in its sole discretion that UNMCP has violated a material term of this section. The Parties agree to amend this Agreement as necessary to comply with HIPAA and any regulations that may be promulgated there-under. The Parties agree to execute such other agreements as may be required by law. The Parties' obligations and rights under this section shall survive termination of this Agreement.

14. **Notice.** Any notice, demand, or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed as follows:

If to UNMCP: UNMC Physicians
Attn: Deputy General Counsel
988101 Nebraska Medical Center
Omaha, NE 68198-8101

If to COUNTY: James C. Tourville
Douglas County Health Center
4102 Woolworth Avenue
Omaha, NE 68105

15. **Amendments.** This Agreement may be amended only by a written instrument executed by all Parties.
16. **Assignment.** This Agreement shall not be assignable by one party without the prior written consent of the other Party, except that UNMCP may assign its rights and obligations under this Agreement to its successor or any entity which is in control of, controlled by, or under common control with UNMCP, without the prior consent of COUNTY.
17. **Governing Law.** Parties to this Agreement shall conform to all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement. Venue for any non-federal legal proceeding under this Agreement shall be in the State of Nebraska, District Court of Douglas County and for any federal legal proceeding in the United States District Court for the State of Nebraska located in Omaha Nebraska.
18. **Waiver.** A waiver of the breach of any term or condition of this Agreement by either Party shall not constitute a waiver of any other term or provision or any subsequent breach or breaches.
19. **Severability.** In the event any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions shall continue in full force and effect provided the fundamental rights and obligations remain reasonably unaffected.
20. **Captions.** The captions and headings used throughout this Agreement are for convenience only, and such captions are not to be construed to be a part of this Agreement or to be used in determining or construing the intent or context of this Agreement.

21. **Entire Agreement.** This Agreement, including any exhibits referenced herein, contains the entire agreement of the Parties and supersedes all prior agreements, contracts and understandings, either written or oral, between the Parties. This Agreement may be executed in one or more counterparts, which each shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall supersede and replace any prior agreements between UNMCP and COUNTY concerning the Services described herein.
22. **Funding Out Clause.** Due to possible future reductions in County, State and/or Federal appropriations, COUNTY cannot guarantee the continued availability of funding for this Agreement, notwithstanding the consideration stated in this Agreement. In the event funds to finance this Agreement become unavailable either in full or in part due to such reduction in appropriations, COUNTY may terminate the Agreement or reduce the consideration upon notice in writing to UNMCP. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. COUNTY shall be the final authority as to the availability of funds. The effective date of such Agreement termination or reduction in consideration shall be specified in the notice as the date of service of the notice or the actual effective date of the County, State and/or Federal funding reduction, whichever is later. Provided, that reduction shall not apply to payments made for services satisfactorily completed prior to the effective date. In the event of a reduction of consideration, UNMCP may cancel this Agreement as of the effective date of the proposed reduction upon the provision of advance written notice to COUNTY.
23. **Nondiscrimination.** Both Parties agree that in accordance with the Nebraska Fair Employment Practice Act, Neb.Rev.Stat. §48-1122, they will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the age, race, color, religion, sex, disability, or national origin of the employee or applicant. None of the Parties shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances.
24. **New Employee Work Eligibility Status.** UNMCP is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
25. **Public Benefits.** With regard to Neb.Rev.Stat. §§4-108-113, neither Party is an individual or sole proprietorship. Therefore, neither Party is subject to the public benefits attestation and related requirements of Neb.Rev.Stat. §§4-108-113.
26. **Drug Free Policy.** UNMCP assures COUNTY that it has established and maintains a drug free workplace policy.

IN WITNESS HEREOF, the parties have executed this Agreement as of the Effective Date.

UNMC Physicians

COUNTY

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT 1

MEDICAL DIRECTION SERVICES

Physician shall provide the following medical direction services for the DCHC Short Term Rehabilitation Unit:

- 1) Attend weekly Medicare/Medicaid "Stand Up" meetings;
- 2) Approve Policies/Procedures for operation of Short Term Rehabilitation Unit
- 3) Lead monthly quality improvement meetings
- 4) Provide staff education regarding Medicare skilled services